

The public health disaster associated with COVID-19 continues to affect all aspects of Texas life, including the ability to conduct democratic elections. It is a failure of state leadership that while COVID-19 cases were spiking across the state, Texas leaders have wasted time in court trying to limit voters' options to safely cast their ballots rather than protecting the sacred right to vote for all eligible Texans.

Governor Greg Abbott first issued a disaster declaration related to COVID-19 on March 13, 2020. The commissioner of the Texas Department of State Health Services followed suit to declare a public health disaster in Texas on March 19, 2020, noting that COVID-19 “poses a high risk of death to a large number of people, and creates a substantial risk of public exposure because of the disease’s method of transmission and evidence that there is community spread in Texas.”<sup>16</sup> The following day, Governor Greg Abbott delayed the primary election runoffs from May 26, 2020 to July 14, 2020,<sup>17</sup> and he later extended the early voting period for both the runoff and general election to be held this fall,<sup>18,19</sup> following one best practice for conducting elections during a disaster. Conditions in Texas has only worsened since these initial disaster declarations, as noted by their continued monthly renewal by state leadership.<sup>20</sup>

However, the state’s response on the whole has not only ignored best practices, but has actively fought against efforts to implement them. The Texas Legislature must ensure that these legal battles and complications do not threaten future elections conducted under COVID-19 or other emergency situations.

The primary example is the ongoing legal cases over Texas’s restrictive absentee ballot eligibility laws. Texas is one of just 16 states that requires voters to provide an excuse to vote absentee, and Texas is further in the minority as one of just seven states to impose an arbitrary age requirement.<sup>21</sup> It is clear that voters who do not fall into the narrow requirements established by the state will potentially be forced to risk their health – as well as the health of those they live with, work with, and otherwise interact with – by voting in-person in a projected high-turnout election in November. Equally troubling is the prospect that eligible voters will avert this risk by not casting their ballot at all. Yet despite multiple lawsuits urging Texas to adjust absentee ballot requirements to the current emergency situation, state leaders have wasted resources by dragging these lawsuits through the courts and refusing to act to protect voters.

Texas’s absentee ballot system has also been found to unconstitutionally disenfranchise voters by not notifying mail-in voters when their ballots are rejected due to a “perceived signature

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<sup>16</sup><https://www.dshs.state.tx.us/coronavirus/execorders.aspx#:~:text=John%20Hellerstedt%2C%20commissioner%20of%20DHS%2C%20declared%20a%20public%20health%20disaster,and%20evidence%20that%20there%20is> <sup>17</sup><https://www.texastribune.org/2020/03/20/texas-delaying-primary-runoff-election-response-coronavirus-outbreak/>

<sup>18</sup> <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-regarding-july-4th-early-voting-for-special-runoff-elections>

<sup>19</sup> <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-extending-early-voting-period-for-november-3rd-election>

<sup>20</sup> <https://gov.texas.gov/news/post/governor-abbott-extends-statewide-disaster-declaration-for-covid-19>

<sup>21</sup> [https://andrewgoodman.org/wp-content/uploads/2020/06/Age-Discrimination-In-Voting-At-Home-Report\\_Final.pdf](https://andrewgoodman.org/wp-content/uploads/2020/06/Age-Discrimination-In-Voting-At-Home-Report_Final.pdf)

mismatch.”<sup>22</sup> Not only is signature verification currently conducted by untrained local election officials with no standardized review process, it also disproportionately affects young voters who may not have developed a permanent signature, disabled voters whose signature has changed due to their disability, and older voters whose signature may have changed over time. There is also evidence that voters of color and young voters disproportionately have their mail-in ballots rejected, often due to signature verification laws, late-arriving ballots, and general inexperience with absentee voting that points to a need for stronger voter education.<sup>23</sup>

Moreover, current law does not give a voter the opportunity to cure their ballot if it is flagged as a perceived mismatch. In September 2020, a federal judge agreed with plaintiffs that Texas must cease rejecting absentee ballots under the current inadequate verification system or must provide voters a meaningful opportunity to cure their ballots.<sup>24</sup> 19 states already require that voters have a chance to cure their ballots, providing guidelines by which Texas can fix its own absentee ballot system if the state insists on signature verification.<sup>25</sup>

Furthermore, the state has made minimal effort to support local elections officials who are tasked with running in-person polling places without endangering the health of voters, poll workers, or officials. When Governor Abbott finally followed guidance from the Centers for Disease Control and Prevention (CDC) and ordered a statewide mask mandate, he specifically carved out an exception for “any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election,” while noting that “wearing a face covering is strongly encouraged.”<sup>26</sup>

However, a court has ruled that the state has the authority to mandate face masks and other public health measures at a polling place, which the district judge noted could “easily be implemented to ensure all citizens in the State of Texas feel safe and are provided the opportunity to cast their vote.”<sup>27</sup> The Governor’s stated rationale for excluding polling places from the mask mandate is “based upon constitutional purposes” so that voters are not prevented from voting if they do not have a mask.<sup>28</sup> But the order fails to consider the consequences for voters or poll workers who decide to avoid the polling place out of fear of contact with unmasked Texans.

This concern caused problems in the July runoff election, including last-minute polling place closures due to poll workers quitting, explicitly because of the failure to require masks in polling places.<sup>29</sup> It threatens to disenfranchise more voters in the higher-turnout November election. Moreover, the voters who are most likely to be affected are also the voters most at risk from COVID-19. Black and Latinx voters have seen their communities hit hardest by the virus due to

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<sup>22</sup> <https://www.texastribune.org/2020/09/08/texas-mail-in-voting-lawsuit/>

<sup>23</sup> [https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397fbe92-db3d-11ea-809e-b8be57ba616e\\_story.html](https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397fbe92-db3d-11ea-809e-b8be57ba616e_story.html)

<sup>24</sup> <https://www.texastribune.org/2020/09/08/texas-mail-in-voting-lawsuit/>

<sup>25</sup> [https://www.eac.gov/sites/default/files/electionofficials/vbm/Signature\\_Verification\\_Cure\\_Process.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Signature_Verification_Cure_Process.pdf)

<sup>26</sup> <https://gov.texas.gov/news/post/governor-abbott-establishes-statewide-face-covering-requirement-issues-proclamation-to-limit-gatherings-2>

<sup>27</sup> <https://www.texastribune.org/2020/09/08/texas-voting-rules-lawsuit/>

<sup>28</sup> <https://www.texastribune.org/2020/07/03/texas-mask-order-voting-chruches-greg-abbott/>

<sup>29</sup> <https://www.texastribune.org/2020/07/15/texas-primary-runoff-elections-november/>

a history of inadequate infrastructure and healthcare in segregated communities of color, putting them at greater risk from casting a vote in person.<sup>30</sup> Black and Latinx voters in Texas are also more likely to be younger and not eligible to apply for an absentee ballot under current law, meaning they will likely constitute a larger percentage of in-person voters.<sup>31</sup>

The state could work with election officials to provide extra personal protective equipment (PPE) for voters who lack it, or work with counties and cities to ensure that no Texan lacks PPE during a deadly pandemic. Instead, it has provided minimal support or guidance while actively intervening with local jurisdictions' ability to run their own election procedures. Most recently, the Texas attorney general sued Harris County over a plan to send applications for mail-in ballots to all registered voters. Harris County planned to include clear guidance on eligibility to vote absentee. Notably, the lawsuit fails to cite any state law that explicitly prevents the county's pro-voter action, while the Secretary of State's website does not require voters to certify that they meet eligibility requirements before printing the application to vote by mail.<sup>32</sup>

The end result of endless lawsuits and fearmongering by the state is that Texas voters are confused and discouraged. As Children's Defense Fund – Texas and our partners interact with Texans through nonpartisan voter registration and education efforts, voters continue to raise questions and concerns about voting during an emergency. These include confusion about eligibility to vote by mail, concerns about absentee rejection rates and the reliability of the post office, questions about options to vote safely if they live with immunocompromised or elderly family members, and fears that they will be penalized for voting absentee even if they are eligible. Again, it is difficult to estimate the number of voters who will decide not to cast their ballots due to the risk of coronavirus or confusion exacerbated by state leadership. However, anecdotal reports suggest that some voters in July did choose to protect their health at the cost of exercising their right to vote, and many will face this same choice in the general election.

There is no reason that voters should have to choose between public health and their right to vote. In fact, many other states under political leaders of both parties have decided to take steps to expand vote-by-mail and otherwise ensure that voters can safely cast their ballots without endangering their health. Eleven states that previously required that voters provide an excuse to vote by mail have expanded or suspended eligibility requirements due to the COVID-19 emergency, including states as geographically and ideologically diverse as Alabama, Kentucky, Massachusetts, Missouri, and New York.<sup>33</sup>

Texas is therefore one of just five states that will impose eligibility restrictions on voting by mail in this general election.<sup>34</sup> This failure to protect voters' health and constitutional rights will have

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<sup>30</sup> <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>

<sup>31</sup> [https://lulac.org/covid19/Covid19\\_LULAC\\_vs\\_Gov\\_Gregg\\_Abbott-05112020.pdf](https://lulac.org/covid19/Covid19_LULAC_vs_Gov_Gregg_Abbott-05112020.pdf)

<sup>32</sup> <https://www.texastribune.org/2020/08/31/texas-harris-county-mail-in-ballot/>

<sup>33</sup> <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-mail-voting-policies-in-effect-for-the-2020-election.aspx>

<sup>34</sup> As of September 16, 2020, these five states are Indiana, Louisiana, Mississippi, Tennessee, and Texas. See: <https://thefulcrum.us/voting/south-carolina-absentee-voting>

an outsize impact in a state with over 16 million registered voters.<sup>35</sup> The actions of other states demonstrate that it is possible to respond responsibly to an emergency without threatening the democratic process. Moreover, it should not take an unprecedented public health emergency to make these overdue and commonsense reforms. Under the current Texas Election Code, it is easier for an astronaut to vote from space than it is for an able-bodied college student to vote from their dorm room.<sup>36</sup> While it is admirable that the state takes the unique circumstances of outer-space voters into consideration, it is unconscionable that the millions of voters excluded from current absentee ballot law do not merit the same concern. This is a public and civic health crisis that the state has the power and the responsibility to fix before the next election cycle.

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<sup>35</sup> <https://www.sos.state.tx.us/elections/historical/70-92.shtml>

<sup>36</sup> <https://www.houstonpublicmedia.org/articles/news/nasa/2018/11/05/310711/how-nasa-astronauts-vote-from-space/>

